



SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN: 3245-AG61

Disaster Assistance Loan Program; Disaster Loan Credit and Collateral Requirements.

AGENCY: U.S. Small Business Administration (SBA)

ACTION: Interim Final Rule with request for comments.

SUMMARY: SBA is amending its disaster loan program regulations in response to Hurricane Sandy Rebuilding Task Force recommendations. One change allows SBA to rely on the disaster loan applicant's credit, including credit score, rather than personal or business cash flow in order to assess repayment ability for those applicants with strong credit.

Another change will increase the amount of disaster assistance funds that can be immediately disbursed to borrowers by raising the unsecured threshold for economic injury loans for all disasters and for physical damage loans for major disasters. Both of these changes will enable SBA to provide disaster assistance more quickly and efficiently.

DATES: *Effective date:* April 25, 2014.

Applicability date: This rule is applicable for disasters declared on or after April 25, 2014.

Comment date: Comments must be received on or before June 23, 2014.

ADDRESSES: You may submit comments, identified by RIN 3245-AG61, by any of the following methods: (1) Federal Rulemaking Portal: <http://www.regulations.gov>, following the specific instructions for submitting comments; (2) Fax: (202) 481-2336; or Email:

James.Rivera@sba.gov; or (3) Mail/Hand Delivery/Courier: James E. Rivera, Associate Administrator for Disaster Assistance, 409 3rd Street, S.W., Washington, DC 20416.

SBA will post all comments to this interim final rule on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, you must submit such information to U.S. Small Business Administration, Bartie J. Larsen, Office of Disaster Assistance, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416, or send an email to bartie.larsen@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Bartie J. Larsen, Office of Disaster Assistance, 202-205-6734 or Bartie.Larsen@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Hurricane Sandy Rebuilding Task Force was established pursuant to an Executive Order issued on December 7, 2012, E.O. 13632, Establishing the Hurricane Sandy Task Force (December 7, 2012). This Task Force was established to ensure the recovery effort benefitted from cabinet-level focus and coordination, and was charged with establishing guidelines for the investment of Federal funds made available for the recovery. With the Secretary of Housing and Urban Development as its Chair, the Task Force consisted of the heads of twenty-three executive department agencies and offices. As a member of this task force, SBA collaborated with these executive agencies and offices to identify and work to remove obstacles to resilient rebuilding while taking into account existing and future risks and promoting the long-term sustainability of communities and ecosystems in the Sandy-affected region. The resultant Rebuilding Strategy developed by the Task Force included

recommendations across several policy areas. See

http://portal.hud.gov/hud_portal/documents/huddoc?id=HSRebuildingStrategy.pdf. The Task

Force recommended that SBA, among other recommendations, (a) institute new and innovated process improvements to SBA's Disaster Loan program, and (b) increase SBA's unsecured disaster loan limits in order to expedite the disbursement of small dollar loans.

II. Explanation of Changes

SBA is incorporating the Task Force's recommendation to institute new and innovated process improvements to SBA's Disaster Loan Program by amending 13 CFR 123.6 of SBA regulations to allow SBA to rely on a disaster applicant's credit, including score, as evidence of repayment ability. The current language of §123.6 requires SBA to analyze every applicant's personal or business cash flow, which is a time consuming process. The interim final rule revises §123.6 to allow SBA to base its repayment ability determination on either the applicant's cash flow or credit, including credit score. The repayment analysis will still include the verification of income/employment through Federal income tax returns. SBA also still plans to analyze personal or business cash flow to determine repayment ability for those applicants that do not have strong credit, as determined by SBA. However, removing the requirement to analyze cash flow for all loans allows SBA to expedite processing of applications from disaster victims with strong credit. Expediting the approval of disaster loan applications with strong credit will make processing more efficient because SBA can then dedicate additional staff to applications that do not have strong credit, thereby reducing overall processing time for all loans. This change is also a result of SBA's Retrospective Regulatory Review efforts, specifically the "Accelerated Approval Disaster Loans Based on Credit Scores" project in SBA's Final Plan for Retrospective Analysis of Existing Rules (available at [3](http://www.sba.gov/about-</p></div><div data-bbox=)

[Sba/sba_performance/strategic_planning/sba_final_plan_for_retrospective_analysis_of_existing_rules](#)).

SBA is also revising 13 CFR §123.11 to incorporate the Task Force's recommendation to increase SBA's unsecured disaster loan limits. SBA's current limits on unsecured disaster loans, which do not require collateral, are \$14,000 for physical damage and \$5,000 for economic injury. The revised regulations will raise the unsecured limit to \$25,000 for economic injury loans for all disasters and for physical damage loans for major disasters. The unsecured limit for physical damage loans for non-major disasters will continue to be \$14,000, in accordance with the Small Business Act. With these increased limits, more businesses, homeowners, and other potential victims that may be impacted by future disasters will receive much-needed small dollar loans more quickly following a disaster. The above changes apply to all eligible recipients of SBA disaster loans for disasters declared on or after April 25, 2014.

III. Justification for Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act, 5 U.S.C. 553. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b) (3) (B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

Disasters are unpredictable and can happen with very little notice. Since SBA cannot predict the occurrence or magnitude of disasters, it reserves the right to change the rules governing SBA disaster assistance loans without advance notice, by publishing interim

regulations in the Federal Register. 13 CFR 123.1. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest as it would prevent expedited processing and disbursement of disaster loans. Any such delay may cause undue hardship to homeowners, businesses and their communities as they struggle to recover from future disasters.

SBA invites comments from all interested members of the public. These comments must be received on or before the close of the comment period noted in the DATES section of this interim final rule. SBA will then consider these comments in making any necessary revisions to these regulations.

IV. Justification for Immediate Effective Date

The APA requires that "publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as . . . otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d) (3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect.

SBA's disaster loan program offers low interest, fixed rate loans to disaster victims, enabling them to replace property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses and non-profits to help them recover from economic injury caused by such disasters. The changes in this interim final rule will not require members of the public to adjust their behavior. Rather, the changes will benefit the public by expediting the processing and disbursement of SBA disaster loans.

In light of the urgent need to assist disaster victims, SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. While this interim final rule is effective immediately upon publication, SBA is inviting public comment on the rule during a 60-day period and

will consider the comments in developing a final rule. SBA has included an applicability date to make clear that the rule is applicable for disasters declared on or after the date of publication in the Federal Register in order to make these changes available to future disaster victims as soon as possible.

Compliance with Executive Orders 12866, 12988, 13132, and 13563 and the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612)
Executive Order 12866

The Office of Management and Budget (OMB) has determined that this interim final rule is a significant regulatory action for the purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

A. Regulatory Objective of the Proposal

SBA is amending its disaster loan program regulations in response to Hurricane Sandy Rebuilding Task Force recommendations to (a) institute new and innovative process improvements to SBA's Disaster Loan program; and (b) increase SBA's unsecured disaster loan limits in order to expedite the disbursement of small dollar loans. Amending §123.6 of SBA regulations will allow SBA to rely on a disaster loan applicant's credit, including credit score, in order to assess repayment ability. Amending § 123.11 will raise SBA's limits on unsecured disaster loans (currently \$14,000 for physical damage and \$5,000 for economic injury) to \$25,000 for economic injury loans for all disasters and for physical damage loans for major disasters.

B. Benefits of the Rule

This interim final rule will directly benefit disaster victims by decreasing the amount of time required by SBA to process disaster loan applications and increasing the amount of loan proceeds available for disbursement without collateral. Credit scoring will allow for a

more expeditious approval process because SBA will not be constrained by the requirement to conduct a complete cash flow analysis for every loan (which includes debt reconciliation and a repayment analysis to determine if there are funds available for both loan payments and day-to-day living expenses). Removing the requirement to analyze cash flow for all loans allows SBA to expedite processing of applications from disaster victims with strong credit, which will allow SBA to dedicate more staff to more time-consuming applications, thereby reducing overall processing time for all loans. This change is also a result of SBA's Retrospective Regulatory Review efforts, specifically the "Accelerated Approval Disaster Loans Based on Credit Scores" project in SBA's Final Plan for Retrospective Analysis of Existing Rules (available at http://www.sba.gov/about-Sba/sba_performance/strategic_planning/sba_final_plan_for_retrospective_analysis_of_existing_rules).

Increasing the unsecured loan threshold for economic injury loans for all disasters and for physical damage loans for major disasters to \$25,000 will also benefit disaster victims. Currently, SBA can only disburse up to \$5,000 for economic injury loans and up to \$14,000 for physical damage loans prior to obtaining the appropriate security instruments. This increase will allow SBA to quickly disburse more funds to disaster victims. For example, under certain circumstances SBA may require additional documentation to disburse funds above the unsecured limit (e.g., a building permit is required prior to any disbursement for repairs above \$14,000 to property that secures the loan). Unsecured loans, however, require only limited documentation: an executed note, loan authorization and agreement, and proof of flood insurance if the property is located in a Special Flood Hazard Zone. Because there is less documentation to collect and review, SBA can disburse funds below the unsecured loan threshold much more quickly.

C. Costs of the Rule

The calculated subsidy from the proposed changes has no significant impact on the overall subsidy rate. In addition, the rule will not result in any additional costs to disaster victims. Although SBA will use expedited processing to approve loan applications from disaster victims with strong credit, loan applications will not be declined based solely on credit scores. SBA still plans to analyze personal or business cash flow to determine repayment ability for those applicants who do not have strong credit.

D. Alternatives

Working with the other members of the Hurricane Sandy Rebuilding Task Force, SBA determined that these regulatory changes are the best available means of achieving the Task Force's goals of instituting new and innovated process improvements to SBA's Disaster Loan program and increasing SBA's unsecured disaster loan limits.

SBA has already made several non-regulatory changes to implement the Sandy Task Force's recommendation to institute new and innovated process improvements to the disaster loan program. For example, SBA has implemented a process of separate application tracks for business and home disaster loans, which allows SBA to process business disaster loans more quickly. In addition, SBA has established a new training module for reserve disaster loan officers based on efficiencies and improvements identified in an analysis of the Hurricane Sandy response to ensure that a trained reserve staff is in place for future disasters. However, in order to fully implement the recommendations of the Task Force, SBA must revise its regulations to allow SBA to base its repayment ability determination on either the applicant's cash flow or credit, including credit score, and to increase the unsecured disaster loan limits.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect. The final rule will not have retroactive effect and will not apply to disasters declared before April 25, 2014.

Executive Order 13132

SBA has determined that this interim final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this interim final rule has no federalism implications warranting preparation of a federalism assessment. Executive Order 12866 and 13563

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 also requires that regulations be based on the open exchange of information and perspectives among state and local officials, affected stakeholders in the private sector, and the public as a whole.

In developing this rule, SBA collaborated with multiple agencies through its participation on Hurricane Sandy Rebuilding Task Force. The Task Force was led by the Secretary of Housing and Urban Development, and included twenty-three executive department agencies and offices. The Task Force worked with these Federal

agency members as well as state and local officials to identify areas where immediate steps could be taken to help communities recovering from Hurricane Sandy. SBA continues to communicate with the other members of the Task Force via monthly progress reports.

Executive Order 13563 also recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. SBA had identified revisions to § 123.6 to expedite approval of disaster loans based on credit score as a part of its retrospective review. As stated in that report, an analysis of the performance of disaster loans to borrowers with strong credit indicated limited risk.

Changing the current process of requiring a cash flow analysis for all loan applications would allow SBA more flexibility to design a loan approval that is in line with current private sector practices and reduce the processing cost for disaster loans.

Paperwork Reduction Act (44 U.S.C. Ch. 35)

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this interim final rule would not impose any new reporting or recordkeeping requirements.

Regulatory Flexibility Act (5 U.S.C. 601-612)

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 requires administrative agencies to consider the effect of their actions on small entities, including small businesses. According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. Rules are exempt from the APA notice and comment requirements when the agency for good cause finds that notice and public

procedure thereon is impracticable, unnecessary, or contrary to the public interest. SBA has determined that there is good cause to adopt this interim final rule without prior public participation; therefore, the rule is also exempt from the RFA requirements. SBA invites comments on this determination.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Reporting and record keeping requirements, Small businesses, Terrorism.

For reasons set forth in the preamble, SBA amends 13 CFR part 123 as follows:

PART 123- DISASTER LOAN PROGRAM

1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b) (6), 636(b), 636(d), 657n; Pub. L. 102-395, 106 Stat. 1828, 1864; Pub. L. 103-75, 107 Stat. 739; and Pub. L. 106-50, 113 Stat. 245.

2. Amend § 123.6 by revising the first sentence to read as follows:

§ 123.6 What does SBA look for when considering a disaster loan applicant?

There must be reasonable assurance that you can repay your loan based on SBA's analysis of your credit or your personal or business cash flow, and you must also have satisfactory character. * * *

3. Amend § 123.11 as follows:

- a. Remove the introductory text and paragraph (c);
- b. Redesignate paragraphs (a) and (b) as (c) and (d)
- c. Add new paragraphs (a) and (b); and
- d. Revise the second sentence of newly redesignated paragraph (c) to read as follows.

§ 123.11 Does SBA require collateral for any of its disaster loans?

(a) When collateral is not required:

(1) Economic injury disaster loans. Generally, SBA will not require that you pledge collateral to secure an economic injury disaster loan of \$25,000 or less.

(2) Physical disaster home and physical disaster business loans. SBA will not require that you pledge collateral to secure a physical disaster home or physical disaster business loan of \$14,000 or less. In addition, under a Major Disaster, SBA generally will not require that you pledge collateral to secure a physical disaster home or physical disaster business loan of \$25,000 or less.

(3) IDAP loans. Collateral requirements for IDAP loans are set forth in Subpart H of this part.

(4) Military Reservist EIDL. For the purposes of the Military Reservist EIDL only, as described in section 123.513, SBA will not generally require that you pledge collateral to secure a loan of \$50,000 or less.

(b) For loans larger than the amounts outlined in paragraph (a) of this section, you will be required to provide available collateral such as a lien on the damaged or replacement property, a security interest in personal/business property, or both.

(c) * * * In deciding whether collateral is required, SBA will add up all physical disaster loans to see if they exceed the applicable unsecured threshold outlined in paragraph (a)(2) of this section and all economic injury disaster loans to see if they exceed \$25,000.

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Dated: April 16, 2014.

Maria Contreras-Sweet,
Administrator.

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